IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 7733 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE A.S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO LTD - Appellant(s)
Versus
GANGABEN TAPUBHAI (DELTED) & 13 - Defendant(s)

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Appearance :
MR VIBHUTI NANAVATI for Appellant(s) : 1,
DELETED for Defendant(s) : 1, 11,
MR BP MUNSHI for Defendant(s) : 2 - 10.
NOTICE SERVED for Defendant(s) : 11.2.1, 11.2.2, 11.2.3, 14,
MS DAXA R VYAS for Defendant(s) : 11.2.1
SERVED BY RPAD - (N) for Defendant(s) : 11.2.2,11.2.3
None for Defendant(s) : 12,
MS MEGHA JANI for Defendant(s) : 13,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
HONOURABLE MR.JUSTICE A.S.DAVE

Date : 13/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. By instant appeal filed under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short), the appellant - New India Assurance Company Limited has brought under challenge the judgment and award dated 31.8.1999 rendered in Motor Accident Claim Petition No. 475 of 1993 by the Motor accident Claims Tribunal (Main) at Jamnagar, by which the claim petition filed by respondent Nos.2 to 10/original claimants under Section 166 of the Act to recover compensation of Rs.5,60,000/- on account of untimely demise of Mahendrakumar Tapubhai Solanki, the bread-winner of the family of the claimants in a road accident which took place on 10.4.1993, came to be partly allowed and thereby the claimants were awarded total compensation of Rs.4,17,600/- along with proportionate cost and interest at the rate of 12% per annum from the date of the petition till the amount is paid and accordingly the appellant, driver and owner of the offending truck were directed to pay the said amount to the claimants

jointly and severally.

2. For the sake of convenience, the parties are referred to as they are arrayed in the Tribunal.

3. The facts giving rise to this appeal, in brief, are that:

3.1. On the fateful day i.e., 10.4.1993 at about 8.30 a.m. deceased Mahendrakumar Tapubhai Solanki, was going for joining training of Fire day held by the Municipal Corporation, Jamnagar, riding his scooter bearing registration No.GRI 3566. At the time, when he reached Opposite M.P. Shah Commerce College, on saat rasta, in the City of Jamnagar, one truck bearing registration No.MP-09-K-3628 came from the opposite direction, being driven by its driver in full speed and in a rash and negligent manner and as a result of this negligent act on the part of the driver of the truck, it went on the wrong side of the road and

dashed with the scooter of the deceased with the result the deceased was thrown off the scooter, received serious injuries and died instantaneously.

3.2. It was the case of the claimants that the accident was the result of rash and negligent driving on the part of the driver of the truck which was owned by opponent No.1 and, therefore, opponent No.1 being the owner of the truck involved in the accident was vicariously liable and the insurance company had to indemnify the award which was going to be passed against the driver and owner of the insured vehicle and therefore the appellant herein being insurer was also liable to satisfy the award passed against the owner of the truck. Thus, the claimants have claimed the amount of compensation from the driver, owner and insurer of the truck involved in the accident.

3.3. Putting forward the claim of compensation, it was averred by the claimants that the deceased was serving in the Fire Department of the Municipal Corporation, Jamnagar for the last 18 years and in March 1993 his pay was Rs.2288/-. He was also getting bonus every year and over time income also, and thus his total income per month was Rs.2400. At the relevant time the deceased was 40 years of age and, therefore, even after retirement also he would have earned and maintained the claimants. On these counts, the claimants had claimed compensation of Rs.5,60,000/- together with interest and costs thereon from the driver, owner and insurer of the truck involved in the accident.

3.4. The claim petition was contested by the owner of the truck, opponent No.1, by filing written statement at Ex.51 while the opponent No.3, New India Assurance Company Limited, the

appellant herein, filed written statement at Ex.18. The sum and substance of the defence raised by the owner and the insurance company was that the deceased himself was rash and negligent in driving the scooter at the relevant time and he went on the wrong side of the road and collided with the truck which was coming from the opposite direction on the correct side of the road. It was also their contention that the truck was driven at a moderate speed and therefore the deceased himself was negligent to the fullest extent for causing the accident in which he lost his life and hence the opponents were not liable to pay the compensation.

3.5. So far as the claim of compensation is concerned, it was denied that the deceased was earning Rs.2288/- per month at the relevant time. It was also contended that the claim was on higher side. The main defence canvassed by the insurance company was that at the relevant time

the driver of the truck was not holding a valid driving licence and, therefore, the insurance company was not liable to pay compensation. On the aforesaid premises it was prayed to dismiss the claim petition with costs.

3.6. The Tribunal on assessment, evaluation, analysis and close scrutiny of the evidence on record, came to the conclusion that the accident was the result of rash and negligent driving on the part of the deceased as well as the driver of the truck and the Tribunal has apportioned the negligence to the extent of 20:80 between the deceased and the driver of the truck.

3.7. So far as the quantification of compensation is concerned, the Tribunal has considered the revised pay scale of the deceased which came into effect from 1993 and as per the pay scale of 1993 the deceased would have earned Rs.3888/- per month and at the time of

retirement he would have earned Rs.5848 and, therefore, the Tribunal found the average prospective salary of the deceased at Rs.4075/- per month which was rounded off at Rs.4100 and thereafter on the basis of the unit formula, the Tribunal has deducted Rs.630/- by way of personal upkeep of the deceased and assessed dependency value which could have been available to the claimants at Rs.3,470/- per month which would have come to Rs.41,640/- yearly and thereafter, considering the age of deceased who was 40 at the time of accident, applied 12 multiplier and thus determined the dependency benefit at Rs.4,99,680/- (Rs.3,470x12x12 = Rs.4,99,680/-) The tribunal has also awarded Rs.10,000/- for the expectation of life and Rs.10,000/- for loss of consortium and Rs.2,000/- for obsequies ceremonies and awarded the amount in the following break-up:

Rs.4,99,680/- for loss of dependency benefits.

Rs.0,10,000/- for loss of expectation of life.

Rs.0,10,000/- for loss of consortium

Rs.0,02,000/- for expenses of after death ceremony.

Rs.5,22,000/- Total

After calculating the dependency benefits available to the claimants, the Tribunal has deducted 20% from the said amount (i.e., Rs.1,04,400) on account of the negligence of the deceased himself and sliced down 20% from the said amount and then awarded Rs.4,17,600/- towards compensation.

3.8. So far as the defence raised by opponent No.3 - insurance company that the driver was not having valid driving licence, the tribunal has considered the evidence of the owner and driver and the insurance company and come to the conclusion that the owner was not duty bound to enquire from the Licensing Authority about the validity of the licence before engaging the driver and the Insurance Company was liable to indemnify the owner, as the owner cannot be said

to be guilty of breach, disentitling him to get indemnified from the Insurance Company. On the aforesaid premises, the tribunal has passed the impugned award directing the driver, owner and the insurance company to pay Rs.4,17,600/- together with interest and cost jointly and severally which has given rise to instant appeal filed by opponent No.3 – New India Assurance Company Limited.

4. The sole contention advanced by Mr. Vibhuti Nanavati, learned advocate for the appellant, is that at the time of accident the owner had handed over the truck to Vajirbhai who was having valid driving licence and in turn Vajirbhai handed over the truck to Rameshbhai who was not having valid driving license at the relevant time and therefore the insurance company cannot be fastened with the liability as it was within the knowledge of the owner of the truck that the truck was handed over to his authorized driver

who, in turn, handed over the truck to an unauthorized driver who was not having a valid driving licence and therefore according to him, the insurance company cannot be held liable to indemnify the owner for the award which has been passed against the driver and owner. Therefore, he prayed that the appeal deserves to be allowed by modifying the award and excluding the insurance company from the liability of payment of compensation to the claimants. He, therefore, urged to allow the appeal by modifying the award accordingly.

5. Per contra, Mr. BP Munshi, learned advocate for the claimants, has contended that there is ample evidence to the effect that the owner has handed over the truck to the authorized driver Vajirbhai who was having valid driving licence at the relevant time who in turn handed over the truck to Rameshbhai which fact was not within the knowledge of the owner and, therefore, the

insurance company is liable to pay compensation and according to him, the appeal lacks merit and deserves to be dismissed and he urged to dismiss the appeal with costs.

6. We have considered the submissions advanced by Mr. Vibhuti Nanavati, learned advocate for the appellant and Mr. BP Munshi, learned advocate for the original claimants. We have also perused the impugned judgment and award and the testimonial collections which have been supplied by the learned advocates appearing for the parties during the course of their submissions and also decisions of the Supreme Court on the point at issue.

7. So far as the point canvassed by Mr. Vibhuti Nanavati, learned advocate for the appellant is concerned, it is no more res-integra in view of the decision of the Supreme Court in the case of United India Insurance Company Limited v. Lehru

and others, 2003 (2) GLR 1771 (SC). In the said decision, the Supreme Court, after considering its previous decisions rendered in the cases of New India Assurance Company v. Kamla and others, 2002 (1) GLR 916 (SC) and Sohan Lal Passi v. P. Sesh Reddy (1996) 5 SCC 21 has, in para 20, held as under:

"When an owner is hiring a driver, he will therefore, have to check whether the driver has a driving licence. If the driver produces a driving licence which on the face of it looks genuine, the owner is not expected to find out whether the licence has in fact been issued by a competent authority or not. The owner would then take the test of the driver. If he finds that the driver is competent to drive the vehicle, he will hire the driver. It is rather strange that Insurance Companies expect owners to make enquiries with R.T.O.s, which are spread all over the country, whether the driving licence shown to them is valid or not. Thus, where the owner has satisfied himself that the driver has a licence and is driving competently there would be no breach of Sec. 149 (2) (a) (ii). The Insurance Company would not then be absolved of liability. If it ultimately turns out that the licence was fake, the Insurance Company would continue to remain liable unless they prove that the owner/insured was aware or had noticed that the license was fake and still permitted that person to drive. More importantly, even in such a case, the Insurance Company would remain liable to the innocent third party, but it may be able to

recover from the insured."

In the said decision, it was further observed by the Supreme Court, in para 18, as under:

> "The legislature, in its wisdom, has made insurance, at least third-party insurance, compulsory. The aim and purpose being that an Insurance Company would be available to pay. The business of the company is insurance. In all businesses, there is an element of risk. All persons carrying on business must take risks associated with that business. Thus, it is equitable that the business which is run for making profits also bears the risk associated with it. At the same time, innocent parties must not be made to suffer or loss. These provisions meet these requirements. We are thus in agreement with what is laid down in the aforementioned cases viz., that in order to avoid liability, it is not sufficient to show that the person driving at the time of accident was not duly licensed. The insurance Company must establish that the breach was on the part of the insured."

Applying the principles laid down by the Supreme Court in the above referred to judgments to the facts of the present case, there is ample evidence produced on record by the owner that he had handed over the truck to Vajirbhai who was

his paid authorized driver and was holding valid driving licence. However, it was not within his knowledge that his authorized driver had handed over the truck to Rameshbhai who was not having valid driving licence at the relevant time.

In view of the clear elucidation of the Supreme Court in above referred to judgments, according to us, the contention advanced by Mr. Nanavati, learned advocate for the appellant, lacks merit and deserves to be rejected.

8. In view of the foregoing discussions, according to us, there is no substance in the appeal and it deserves to be dismissed.

9. No other point with regard to negligence or quantification of compensation has been canvassed by learned advocates of either side.

10. For the foregoing reasons, the appeal fails

and accordingly it is dismissed with no order as to costs.

11. Needless to mention that the impugned award was passed in the year 1999, as on today more than six years have elapsed and by now all the claimants have become major and hence if any order with regard to investment of awarded amount in FDR was passed in favour of the claimants, which still remains operative, then the claimants are permitted to encash the said FDR.

(A.M. Kapadia, J.)

(Anant S.Dave, J.)

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